

HOUSE BILL REPORT

SB 5551

As Passed House - Amended:

April 10, 2007

Title: An act relating to enforcement of liquor and tobacco laws.

Brief Description: Enhancing enforcement of liquor and tobacco laws.

Sponsors: By Senators Prentice, Kohl-Welles, Clements and Rasmussen; by request of Liquor Control Board.

Brief History:

Committee Activity:

Commerce & Labor: 3/27/07, 3/30/07 [DPA];

Finance: 4/2/07 [DPA(CL)].

Floor Activity:

Passed House - Amended: 4/10/07, 98-0.

Brief Summary of Bill (As Amended by House)

- Expands the authority of the Liquor Control Board to inspect books and records for enforcement of tobacco and cigarette tax laws and authorizes issuance of subpoenas for production of documents for enforcement of liquor laws and tobacco and cigarette tax laws.
- Provides a business and occupation tax exemption for the stamping allowance granted to wholesalers and retailers for affixing cigarette tax stamps.
- Provides a credit on the other tobacco products tax for products sold to the federal government and tribes.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass as amended. Signed by 7 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Green, Moeller and Williams.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Joan Elgee (786-7106).

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass as amended by Committee on Commerce & Labor. Signed by 8 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Orcutt, Ranking Minority Member; Conway, Ericks, McIntire, Roach and Santos.

Staff: Mark Matteson (786-7145).

Background:

The Liquor Control Board (Board) enforces the liquor laws as well as the tax laws for cigarettes and other tobacco products. The Board has inspection authority to obtain information from licensees and common carriers about any matter related to the administration and enforcement of the liquor laws. The Board may inspect the books and records of common carriers when enforcing the tax laws relating to tobacco products but not to cigarettes. The Board has no authority to inspect books and records of vehicle rental agencies.

A tax is imposed on cigarettes at the rate of 202.5 cents per pack of 20 cigarettes. The tax is due from the first person who sells, uses, consumes, handles, possesses, or distributes the cigarettes in this state. Taxpayers pay the tax by purchasing cigarette tax stamps from banks authorized by the Department of Revenue (Department). The stamps are placed on cigarette packs. The taxpayer receives compensation in the amount of \$6 per thousand stamps for affixing stamps to the cigarette packs. By rule, taxpayers have been receiving the stamping allowance as a discount on the price paid for the stamps. The Department has recently determined that the stamping allowance is income subject to the business and occupation tax.

Tobacco products other than cigarettes are taxed at wholesale in the state based on the price at which manufacturers or distributors sell products to unaffiliated distributors, retailers, or consumers. Tax liability on such products is triggered by the sale, handling, or distribution of such products. The tax rate is 75 percent of the taxable sales price, in general. Persons who pay the tobacco products tax may receive credit against tax due under certain circumstances. Such circumstances include sales to other sellers outside the state or returns of the products to the manufacturer. By rule, the Department has allowed credit for sales to federal government agencies. However, the Department recently reviewed its administrative rules with respect to the tobacco products tax and found that it lacks proper statutory authority to administer a credit for sales to the United States or its agencies.

The Department has also allowed a tobacco products tax credit for sales to Indian tribes, based on federal law that preempts state taxing authority from regulating tribal activity when federal and tribal interests outweigh state interests in the regulation of the activity. A recent U.S. Supreme Court decision provided that state taxation is not preempted with respect to transactions with tribes or tribal organizations, however, if the incidence of the tax is outside of Indian Country.

Summary of Amended Bill:

The Board may inspect the books and records of common carriers in enforcing the cigarette tax law, and may inspect the books and records of vehicle rental agencies used to transport contraband cigarettes and other tobacco products.

The Board may also issue subpoenas to compel the production of books and records during an investigation of alleged violations of both the liquor and tobacco tax laws.

An exemption from the business and occupation tax is provided for the stamping allowance provided to cigarette wholesalers and retailers for their services in affixing cigarette tax stamps.

A credit on the tax for other tobacco products is provided for products sold to the United States or any of its agencies or instrumentalities or to federally recognized Indian tribes and tribal entities.

Appropriation: None.

Fiscal Note: Requested on April 2, 2007.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: (Commerce & Labor)

(In support) This bill provides more uniformity in how the Board enforces tobacco laws. It also gives the Board subpoena authority for liquor laws if needed. The mode of operation for bringing in untaxed cigarettes has changed from semi-trucks to common carriers and rental vehicles. This bill would give us legal authority to look at the records of common carriers and rental agencies. The Board has been very successful in reducing untaxed cigarettes coming into the state.

(In support with amendments) We would like amendments. Because of lawsuits and statutory changes, the Department has proposed rule changes that would remove a credit wholesalers receive on other tobacco products sales to the federal government and tribes. It had always been assumed that in-state wholesalers get this credit and they always have. Ironically, out-of-state distributors would get the credit. The amendment would clarify that in-state wholesalers get the credit. The second amendment deals with the business and occupation tax on reimbursement for putting on tax stamps. Wholesalers have not had to pay tax on the reimbursement and the amendment would clarify this. The Department has postponed the rule changes to May 1 to give the Legislature time to act.

(Opposed) None.

Staff Summary of Public Testimony: (Finance)

(In support) This bill as amended would codify long-standing Department practices. The reimbursements for stamping cigarettes has never been an issue. On the tobacco products, we

have distributors that sell all over the region. In the past, if a distributor has made \$50,000 in sales to the military, tribes, or Idaho, he's been able to get a credit for that.

These rule changes will be very damaging to our business. The current stamping allowance for cigarettes does not even cover costs. If the rules go into effect, then the tribes would immediately begin buying from sources in Portland, Coeur D' Laine, or other tribes.

(Neutral) The DOR believes the bill has no issues, either technically or administratively.

(Opposed) None.

Persons Testifying: (Commerce & Labor) (In support) Rick Garza, Liquor Control Board.

(In support with amendments) T.K. Bentler, Washington Association of Neighborhood Stores.

Persons Testifying: (Finance) (In support) T.K. Bentler, Washington Association of Neighborhood Stores; and Justin Erickson, Harbor Wholesale and Washington Association of Neighborhood Stores.

(Neutral) Gil Brewer, Department of Revenue.

Persons Signed In To Testify But Not Testifying: (Commerce & Labor) None.

Persons Signed In To Testify But Not Testifying: (Finance) Rick Garza, Washington State Liquor Control Board.